



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER OF PATENTS AND TRADEMARKS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/057,357	01/24/2002	Christopher F. O'Hare	A34871	2008

21003 7590 06/03/2003

BAKER & BOTTS
30 ROCKEFELLER PLAZA
NEW YORK, NY 10112

EXAMINER

SINGH, SUNIL

ART UNIT	PAPER NUMBER
----------	--------------

3673

DATE MAILED: 06/03/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.
10/057,357

Applicant(s)
O'Hare

Examiner
Sunil Singh

Art Unit
3673



-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136 (a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on applicant's amendment filed 3/20/03
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11; 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above, claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-13 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claims _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on Mar 1, 2002 is/are a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgement is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
*See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. § 119(e).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgement is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____ 6) ☐ Other:

Art Unit: 3673

DETAILED ACTION

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Altemus (US 6161357).

Altemus discloses a module comprising a concrete block (10), at least one through hole (14) which is partially filled with concrete (see col. 1 line 58; col. 2 line 36, col. 4 line 39), at least one projection (38), at least one recess (42).

3. Claim 11 is rejected under 35 U.S.C. 102(b) as being anticipated by Makram (US 2201110).

Makram discloses a module comprising a concrete block, at least one through hole which is partially filled with concrete (see Fig. 7, page 1 left col. line 23, page 3 left col. Lines 38-70), at least one projection, at least one recess (see Figs. 1-3, 7).

Claim Rejections - 35 USC § 103

Art Unit: 3673

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1,2,6-10 and 12-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Altemus in view of Karnas or Suzuki (US 4341489, 4508057).

Altemus discloses the invention substantially as claimed. However, Altemus is silent about his concrete block/module being used as an artificial reef. Karnas and Suzuki both teach concrete block/module being used as artificial reef (see Figs. 1,2 and 22 respectively). It would have been considered obvious to one of ordinary skill in the art to modify Altemus and use his concrete block/module as an artificial reef as taught by either Karnas or Suzuki since such a structure would more effectively withstand tidal current meaning not topple over or move thus defeating its intended purpose.

With regards to claim 7, the (once modified) Altemus is silent about the reinforcing rod being fiberglass. Reinforcing rods being made out of fiberglass are well known and old in the art. It would have been considered obvious to one of ordinary skill in the art to modify the (once modified) Altemus by making the reinforcing rods out of fiberglass since this would prevent rusting.

Art Unit: 3673

With regards to claims 9 and 10, the (once modified) Altemus is silent about his projections and recess being frustoconical and hemispherical in shape. Projections and their corresponding recesses being frustoconical and hemispherical in shape are well known and old in the art. It would have been considered obvious to one of ordinary skill in the art to modify the (once modified) Altemus by making his projections and recesses frustoconical or hemispherical in shape since this is a mere design choice.

6. Claims 1, 3, 4, 5, 7, 9, 10, 12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Makram in view of Karnas or Suzuki (US 4341489, 4508057).

Makram discloses the invention substantially as claimed. However, Altemus is silent about his concrete block/module being used as an artificial reef. Karnas and Suzuki both teach concrete block/module being used as artificial reef (see Figs. 1,2 and 22 respectively). It would have been considered obvious to one of ordinary skill in the art to modify Makram and use his concrete block/module as an artificial reef as taught by either Karnas or Suzuki since such a structure would more effectively withstand tidal current meaning not topple over or move thus defeating its intended purpose.

With regards to claim 7, the (once modified) Makram is silent about the reinforcing rod being fiberglass. Reinforcing rods being made out of fiberglass are well known and old in the art. It would have been considered obvious to one of ordinary skill in the art to modify the (once

Art Unit: 3673

modified) Makram by making the reinforcing rods out of fiberglass since this would prevent rusting.

With regards to claim 10, the (once modified) Makram is silent about his projections and recess being hemispherical in shape. Projections and their corresponding recesses being hemispherical in shape are well known and old in the art. It would have been considered obvious to one of ordinary skill in the art to modify the (once modified) Makram by making his projections and recesses hemispherical in shape since this is a mere design choice.

Response to Arguments

7. Applicant's arguments filed 3/20/03 have been fully considered but they are not persuasive. Applicant argues that both Altemus and Makram do not teach that the at least one through hole is partially filled with concrete. This is not concurred with. See col. 1 line 58; col. 2 line 36, col. 4 line 39 of Altemus reference for such teaching. See Fig. 7, page 1 left col. line 23, page 3 left col. Lines 38-70 of Makram reference for such teaching.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this

Art Unit: 3673

case, the knowledge generally available to one of ordinary skill in the art would lead the skilled artisan to the brick/block art for making/forming an artificial reef wherein the artificial reef is made out of brick/block. For example, a block/brick used as a basement wall in a house can be used to build a retaining wall to prevent soil erosion. Another example would be if bricks were used to build the exterior walls of a house, the same bricks can be used to build a fence. It should be noted that all different types of structures such as a basement wall, soil retaining wall or a fence all got their structure out of the brick/block art. Therefore, if one were to build an artificial reef wherein the reef is made out of brick/block then a skilled artisan would look to the brick/block art for teachings.

In response to applicant's argument that modifying a block/brick used for wall construction or furnaces or furnace linings and use it as an artificial reef as taught by Karnas and Suzuki is nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, if one skilled in the art were faced with the problem of building an artificial reef made out of brick/block then the skilled artisan would look to the brick/block art for teachings. For example, a block/brick used as a basement wall in a house can be used to build a retaining wall to prevent soil erosion. Another example would be if bricks were used to build the exterior walls of a house, the same bricks can be used to build a fence. It should be noted that all different types of

Art Unit: 3673

structures such as a basement wall, soil retaining wall or a fence all got their structure out of the brick/block art. Therefore, if one were to build an artificial reef wherein the reef is made out of brick/block then a skilled artisan would look to the brick/block art for teachings.

Conclusion

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sunil Singh whose telephone number is (703) 308-4024. The examiner can normally be reached on Monday through Friday from 8:30 AM to 5:00 PM.

Art Unit: 3673

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Heather Shackelford, can be reached on (703) 308-2978. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-7687.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-2168.

Sunil Singh

Patent Examiner

Art Unit 3673



HEATHER SHACKELFORD
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600

SS



5/20/03